



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

June 30, 1994

Mr. John C. Foshee  
Attorney  
Texas Parks & Wildlife Department  
4200 Smith School Road  
Austin, Texas 78744

OR94-310

Dear Mr. Foshee:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 24573.

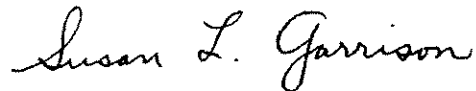
The Texas Parks and Wildlife Department received an open records request from Mr. Johnny V. Garrett for certain records that you contend may be withheld from the public pursuant to section 552.103(a) of the Government Code. To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 551 (1990). In this instance you have made the requisite showing that the requested information relates to reasonably anticipated litigation for purposes of section 552.103(a). The requested records may therefore be withheld, except for those records discussed below.

In reaching our conclusion, we assume that the opposing party to the anticipated litigation has not previously had access to the records at issue; absent special circumstances, once information has been obtained by all parties to the litigation, e.g., through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349, 320 (1982). Accordingly, to the extent that the opposing party in the anticipated litigation has seen or had access to any of these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a). In this regard, we note that the requested report contains various pieces of correspondence addressed to the opposing party, his employment application, and court documents to which he would otherwise have a right

of access; the department may not withhold these records under section 552.103(a) or any of the other exceptions that you raise. The department, however, may withhold any notations that have been made on those documents pursuant to section 552.103(a). Finally, we also note that the applicability of section 552.103(a) ends once the likelihood of litigation regarding the subject matter of the requested report has ended. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Susan L. Garrison  
Assistant Attorney General  
Open Government Section

SLG/RWP/rho

Ref.: ID# 24573

Enclosures: Submitted documents

cc: Mr. Johnny V. Garrett  
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(w/o enclosures)

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